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Mukhtar to save something out of the family property. Unfortunately for the appellant the plea she now sets up is entirely at variance with the case previously pleaded that she and Kishori Kumari succeeded jointly on the death of her husband. This part of the case was dealt with by the learned Judge in considering the question whether the appellant ever got possession of any part of the property after the death of Kishori Kumari. He found that she did not in fact do so, but that Mukhtar Singh was always in possession after the *bazidawa* deed was executed in his favour in 1900. This aspect of the case, however, also has a bearing in considering the plea now put forward by the appellant as to custom. In our opinion the learned Subordinate Judge was right in the conclusions at which he arrived and we consider that this appeal should be dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mullick and Macpherson, J.J.

GULLI BHAGAT

v.

NARAIN SINGH.*

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April, 20.

Code of Criminal Procedure, 1898, (Act V of 1898)—section 494—withdrawal of prosecution, reason for, whether to be recorded—Revision—acquittal practice of High Court—private prosecutor, status of.

Where a court permits a prosecution to be withdrawn under section 494, Criminal Procedure Code, it is not necessary to record its reasons for permitting the withdrawal.

Umesh Chunder Roy v. Satish Chandra Roy⁽¹⁾, *Rajani Kanta Shaha v. Idris Thakur*⁽²⁾ and *Jagat Chandra Roy v. Kalimuddi Sardar*⁽³⁾, dissented from.

(1) (1917-18) 22 Cal. W. N. 69.

(2) (1921) I. L. R. 48 Cal. 1106.

(3) (1921-22) 26 Cal. W. N. 880.

It is not the practice of the High Court in its revisional jurisdiction to inquire into the reasons for, nor interfere with a discretion exercised by a court of competent jurisdiction which is not on the face of it arbitrary.

Faujdar Thakur v. Kasi Chowdhury(1), followed.

The High Court will not interfere in revision at the instance of a private party with an order of acquittal passed under section 494.

Gopi Bari v. King-Emperor(2), referred to.

In prosecutions for cognizable offences a private prosecutor has no *local standi*.

The facts of the case material to this report are stated in the judgment of the Court.

Manohar Lall, for the petitioner.

MULLICK AND MACPHERSON, J.J.—This application raises a somewhat important point, namely, whether an order of acquittal passed under section 494, Criminal Procedure Code, should be revised in this Court at the instance of a private party. It appears that after the case had been fully tried out a petition was filed by the Public Prosecutor on the 6th April, 1923, for leave to withdraw the case. The Magistrate thereupon recorded the following order :

“A petition of protest is filed. I have heard the parties. Accused acquitted under section 494, Criminal Procedure Code. Enter true sections 143, 325, 149 and 323, Indian Penal Code.”

It is now contended before us that the learned Magistrate acted illegally in allowing the withdrawal without recording his reasons for doing so. It is also, though somewhat faintly, urged that there was in fact no grant of consent. Now it is clear from a perusal of the order that the Magistrate heard the parties and that he gave his consent after duly considering the matter; and the only question is whether he was required to draw up a judgment such as is prescribed by section 367 of the Criminal Procedure Code and to record his reasons for allowing the withdrawal. In

(1) (1915) I. L. R. 42 Cal. 612.

(2) Cr. Rev. No. 31 of 1920.

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our opinion there is no provision of law compelling a Magistrate to do this, and once he has given his consent to an acquittal its propriety ought not, in our opinion, to be questioned except upon appeal by the Local Government.

In this connection our attention has, however, been drawn to *Umesh Chunder Roy v. Satish Chandra Roy* (1), where Teunon and Shamsul Huda, J.J., held that the Court must give and record its reasons so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised.

That view was followed by Teunon and Ghosh, J.J. in *Rajani Kanta Shaha v. Idris Thakur* (2) and also in *Jagat Chandra Roy v. Kalimuddi Sardar* (3). In my opinion these cases overstate the law. Section 494 does not expressly require the Court to give any reasons for consenting to the withdrawal nor is there any provision which compels a Court to write a reasoned judgment establishing the propriety of the order. There are many final orders known to the Code for which no reasoned judgment is required.

In the next place where a discretion has been exercised by a Court of competent jurisdiction, which is not on the face of it arbitrary, the practice of the High Court is that as a revisional Court it will neither inquire into the reasons nor interfere.

But the most serious objection to the decisions cited above is that they offend against the principle laid down by the majority of the Court in *Faujdar Thakur v. Kasi Chowdhury* (4) where Jenkins, C. J. observed that the power of interference in revision, with orders of acquittal, should be most sparingly exercised and only in cases where it was urgently demanded in the interests of public justice. The application for revision in this case is an application to revise an order of acquittal, and as no question of

(1) (1917) 22 Cal. W. N. 69.

(3) (1922) 26 Cal. W. N. 880.

(2) (1921) I. L. R. 48 Cal. 1105.

(4) (1914) I. L. R. 42 Cal. 612.

public justice appears to be involved, I do not think that we should be right in interfering except upon a properly constituted appeal.

In this Court there is not much authority upon the point and the only case which has been brought to our notice is *Gopi Bari v. The King-Emperor* (1). In that case which was decided by a Bench formed by a single Judge of this Court, a Magistrate had declined to consider the petition of withdrawal filed by the Public Prosecutor on the ground that the private prosecutor objected to the withdrawal and it was held that his order was without jurisdiction and the learned Judge, instead of sending the case on remand to the trial Court, proceeded to examine the facts himself and exercised the jurisdiction which the trial Court should have exercised. This authority supports the view that section 494 gives the trial Court full jurisdiction to give or refuse consent and that the High Court will only interfere in revision if some question of jurisdiction is involved.

Finally there is a deeper and indeed a fundamental reason for non-interference which turns upon the position of a private prosecutor in prosecutions for cognizable offences. In my opinion the private prosecutor has no position at all in the litigation. The Crown is the prosecutor and the custodian of the public peace and if it decides to let an offender go no other aggrieved party can be heard to object on the ground that he has not taken his full toll of private vengeance.

If, therefore, in the present case, the Court has allowed the Public Prosecutor to withdraw the case upon insufficient or improper grounds, the Local Government is the only authority who can take action for the correction of that error.

We accordingly reject the application.

Application rejected.

(1) Cr. Rev. No. 31 of 1920.

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